

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**JASON EUGENE MIZE v. STATE OF TENNESSEE**

**Criminal Court for Davidson County  
No. 03C-531 Hamilton V. Gayden, Judge**

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**No. M2003-00986-CCA-R3-CD - Filed January 9, 2004**

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**ORDER**

The State has filed a Petition for Rehearing, pursuant to Rule 39, Tennessee Rules of Appellate Procedure, to have this court reconsider its opinion previously filed in this case on December 18, 2003. This court held that the trial court erred by dismissing the Appellant's petition for habeas corpus relief for failure "to file the partial payment of the filing fee." This court went on to state that, upon remand, "the Appellant is entitled to a hearing to determine whether he has alleged sufficient facts that entitle him to relief."

The State alleges that, due to particular wording used in the opinion, the court may have implied that the Appellant was entitled to a full evidentiary hearing addressing the merits of his petition upon remand. The law is well-settled that a trial court may summarily dismiss a petition for writ of habeas corpus where the allegations in the petition would not entitle a petitioner to relief. Tenn. Code Ann. § 29-21-109 (2003); *see also McLaney v. Bell*, 59 S.W.3d 90, 93 (Tenn. 2001). While not the intention of this court, we acknowledge that the language used could imply such a result.

Upon due consideration, we conclude that the State's Petition to Rehear is well taken and should, therefore, be GRANTED. Accordingly, for good and sufficient reasons appearing to the court, the language, "the Appellant is entitled to a hearing to determine whether he has alleged sufficient facts that entitle him to relief," should be amended to state, "the Appellant is entitled to a determination by the trial court as to whether he has stated a cognizable claim for habeas corpus relief and, if so, a full evidentiary hearing on the merits of his petition." The original opinion is modified in accordance with the foregoing. The judgment of this court previously entered remains unchanged.

**PER CURIAM**  
**(Judge David G. Hayes, Judge Jerry L. Smith, Judge Thomas T. Woodall)**